

TOWN OF FRANCESTOWN
OFFICE OF SELECTMEN
27 MAIN STREET • P.O. BOX 5
FRANCESTOWN, NEW HAMPSHIRE 03043-0005

BOARD OF SELECTMEN MEETING MINUTES

March 21, 2016

Selectmen Present: Chair Brad Howell, Abigail Arnold and Henry Kunhardt

Staff Present: Town Administrator Jamie Pike

Also present: Tom Anderson, Larry Ames, Robin Haubrich, Polly Freese, Becky Moul, Jim Gann, Guy Tolman and others

CALL TO ORDER: Mr. Howell called the meeting to order at 6:03 PM

Public Hearing – Pole License Amendments

Chairman Howell called the Public Hearing to order. Mr. Pike reviewed the Pole License amendment process for the Board. The purpose of the amendment is to add specific language to all prior licenses that both notify and obligate the license holder and any attacher to pay all properly assessed property taxes in accordance with RSA 72:23, I(b). Licenses issued prior to 2000 did not contain such language, and is the premise the utility companies are using to challenge their value assessments. The drafted amendment also includes a provision that each license holder, annually, present an inventory to the Town providing the pole location and a listing of each attacher thereto. A letter was submitted in lieu of attendance by Eversource. (Letter Attached) Eversource was agreeable to the terms of the language regarding the payment of taxes, but filed an objection to the annual inventory requirement. They continued to state that there was no legislative authority allowing the Town to require this information. The Board asked if the licenses were amended as drafted and a utility continued to object to the inventory requirement, would the validity of the entire amendment be in jeopardy. Not having an answer, the Board chose to seek advice from council. A motion was made by Ms. Arnold and seconded by Mr. Kunhardt to continue the Public Hearing until March 28th at 6:30pm in the Town Offices Conference Room. **Motion passes.**

Consent Agenda

A motion was made by Ms. Arnold and seconded by Mr. Kunhardt to approve items A-F of the consent agenda. **Motion passes.**

- A. 03/21/2016 Payroll & Accounts Payable Manifest
- B. Intent to Cut – Map 2 Lot 12 – Henry Kunhardt
- C. Milfoil Contract – Aquatic Control Technology (SOLitude Lake Management)
- D. Driveway Permit – Map 6 Lot 32 – John Hopfenspirger
- E. Milfoil Contract – Aqualogic – DASH services
- F. MS-232 – Report of Appropriations Actually Voted

New Business

Larry Ames was present to discuss a possible procedural defect that occurred at the Planning Board's Sub-Division Public Hearing last week. He inadvertently seated a Planning Board Alternate in place of the ex-officio, and according to RSA 673:11:

Whenever a regular member of a local land use board is absent or whenever a regular member disqualifies himself or herself, the chairperson shall designate an alternate, if one is present, to act in the absent member's place; except that only the alternate designated for the city or town council, board of selectmen, or village district commission member shall serve in place of that member.

The Board of Selectmen must approve the alternate member who will sit in place of the ex officio. Abigail Arnold indicated to Mr. Ames that some time ago the Board of Selectmen sent an open-ended letter to the Planning Board indicating that any Planning Board Alternate could sit in place of the ex officio in the event of the ex officio's absence. Mr. Ames said that he contacted NHMA and they opined that a procedural defect did occur but the subdivision was not in jeopardy. The Board of Selectmen were unsure if a procedural defect existed but will look into the matter further and Mr. Pike will contact town counsel for his opinion.

Abigail Arnold suggested having the Frankestown School Board Representative (Morrissey) come in to talk about the issues of structuring the school system, what his thoughts are, what the current thinking is and what the momentum is. The Board agreed. Mr. Pike will contact him to make arrangements.

Ms. Arnold also asked about the driveway permit on Palmer Road; she questioned the section of road from the new driveway to the old delineation between classified and VI. She suggested looking at the sub-division plan at the next meeting. Ms. Arnold also mentioned that there is a new request for a sign for the Grapevine's Annual Spring Walk on May 14th. Melissa Gallagher, the Executive Director of The Grapevine, has requested permission to place a sign on the town green one week before the event. Ms. Arnold would like the Board to take a look at the Selectmen's sign ordinance to see if there are, or may be, any potential problems going forward.

Correspondence:

1. Email from Melissa Gallagher of Grapevine requesting permission to place a sign on the Town Common for the Annual Spring Walk on May 14, 2016
2. Letter from Upton & Hatfield regarding the Fairpoint litigation
3. Copy of a letter from town counsel, Barton L. Mayer, to Jessica Nylund, counsel to the Taylors, regarding how to proceed on the transfer of the Taylor property to the Town
4. Email from Larry Ames, Chair of the Planning Board regarding RSA 673:11 Designation of Alternate Members
5. Fred Douglas' Job Task Report dated 3/21/2016
6. Police Department Press Release dated 3/8 through 3/13/2016
7. Administrative Report from the Town Administrator, Jamie Pike

Henry Kunhardt asked if a Public Hearing was necessary, with 7 days notice, for the transfer of the Taylor property and questioned the timing to complete the transaction by the end of the month. Discussion ensued. It was decided that Mr. Pike will contact town counsel and ask that he will post a

hearing for March 31st unless he is able to arrange for an extension on the Purchase and Sale Agreement.

Administrative Update

Mr. Pike updated the Board on the following:

- Mr. Pike indicated that Chief Douglas is working on a Grant application for OHRV Control through Fish and Game to pay for extra patrol up near Cram and Dennison Pond Road area where they appear to be coming from. *Ms. Arnold questioned whether or not the Town would qualify because there are no full time officers and she thinks the grant maybe only for unbudgeted/unscheduled pay. Mr. Pike will research.*
- In regard to the sale of the weapons, Mr. Pike contacted two auctioneers. He learned that the gun dealers/auctioneers typically do the background checks. Amoskeag Auction Company specialized in gun auctions and they do not restrict their sales to licensed gun dealers as their auctions are online only. They charge a 20% consignment fee and their next sale is on June 4th. The second auctioneer contacted was St. Jean Auctioneers and they recommended that the weapons be sold at the NH State Auction in May. St. Jean, who is the auctioneer at the State auction, does not charge a percentage because he charges a buyer's premium versus a seller's premium. After the sale the guns will be brought to Riley's Gun Shop in Hooksett. Riley's charges \$35 per gun for the background check. St. Jean told Mr. Pike to bring them to the warehouse in April and the State will store them in their safe until the auction in May.

Ms. Arnold made a motion to ask Chief Douglas to remove and destroy any guns that are likely worth less than \$35 and send the rest of the guns to St. Jean [State Auction], seconded by Brad Howell.

Motion passes.

- Chief Douglas asked Bruce Harrington give him a quote on replacing the flood lights on the front of the building. One doesn't work and the other is so dim he can't see to get the key in the lock. Bruce quoted LED lights and fixtures at a cost of \$175.00 each and an hour of labor to install, for a total of approximately \$375.00. The Board of Selectmen authorized the work.
- Gary has placed the order for the loader and it should arrive in May. He is currently receiving bids for paving on Pleasant Pond Road as well as bids for rental equipment. When the quotes are in he will come before the Board to present the information.
- Working on the MS535 annual audit form and creating an RFP for library windows.

Becky Moul requested information on the RFP for Hazardous Waste Day. She said the RFP was supposed to be done immediately after the \$6,000 budget amount was approved. Mr. Pike will start work on that right away.

Robin Haubrich asked about the lighting at the Police Station. Polly Freese asked if the lights were motion controlled or on a timer. Mr. Pike responded that they are on a timer. Ms. Freese asked about the new "strictly enforced" speed limit sign. She wanted to know how it would be enforced. The Board was not aware of the sign. Ms. Freese said she has not seen a reduction in speed.

Becky Moul stated the letter to residents regarding the ordinance passed at Town Meeting and Talkin Trash be kept separate. She stated that the letter needs to come from the Selectmen to the residents about the ordinance. Talkin Trash would be separate. All agreed.

Guy Tolman asked how many guns are involved in the auction and how their value will be determined. Mr. Pike will email a copy to Mr. Tolman in the morning.

Tom Anderson commented on the strictly enforced speed limit signs and spoke to the Chief about it. The Chief stated he wanted to put people on notice for 2 weeks before pulling people over.

Mr. Howell announced that they were going into non-public session in regard to RSA 91-A:3, II(c).

A motion was made by Mr. Howell and seconded by Ms. Arnold to enter a non-public session pursuant to RSA 91-A:3, II(c). Roll call vote. Arnold, Aye; Howell, Aye; Kunhardt, Aye. **Motion passes.**

The Board was in receipt of a listing of the properties that are impending for tax deed from the Tax Collector. The Board discussed if any action should be taken before the deed issuance for any of the subject parties. No decisions were made.

A motion was made by Mr. Kunhardt and seconded by Ms. Arnold to leave non-public session. **Motion passes.**

The minutes of the non-public session were not sealed.

Chairman Howell adjourned the meeting at 7:29pm.

NEXT BOARD OF SELECTMEN MEETING: Monday, March 28, 2015

Respectfully Submitted,

Jamie A Pike

Not approved until signed.

Brad Howell

Abigail Arnold

Henry Kunhardt

**ATTACHMENT:
LETTER FROM EVERSOURCE**



780 N. Commercial Street
P.O. Box 330
Manchester, NH 03105—330

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Senior Counsel, Legal Department
603-634-2459

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March 11, 2016

Board of Selectmen
Town of Francestown
PO Box 5
Francestown, NH 03043-0005



Re: Public Hearing Notice – Hearing to Amend Pole and Conduit Licenses

Hearing Date: March 21, 2016

Dear Board of Selectmen:

The undersigned is legal counsel to Public Service Company of New Hampshire, d/b/a Eversource Energy ("Eversource"). Eversource has received your notice of a public hearing at which the Town of Francestown will take up the matter of a petition by the assessor for the Town of Francestown for the universal amendment of existing pole and conduit licenses in the Town, to require the payment of properly assessed property taxes, and to require licensees to provide information pertaining to entities attached to their poles or conduits.

This is to advise that, to the extent the proposed amendments seek to make language changes to the pole licenses of Eversource consistent with RSA 72:23, and the rulings of the New Hampshire Supreme Court in N.E. Tel. & Tel. Co. v. City of Rochester, 144 N.H. 118 (1999) and Verizon New England v. City of Rochester, 151 N.H. 263 (2004), Eversource does not intend to raise a legal objection to the amendments. However, this should not be construed as a waiver of Eversource's rights to protest, seek an abatement of, or otherwise legally challenge as excessive or disproportionate the assessment by the Town of Francestown of any incremental property tax upon Eversource's use or occupancy of the public right of ways in Francestown, and Eversource fully reserves all such rights.

Eversource does, however, object to the proposed amendments to include the requirement or condition that the licensee (1) notify within 90 days of the date of amendment each attacher to the licensee's poles or conduit, by serving a copy of the petition on each attacher, (2) submit to the Town Clerk a complete list of attachers to each pole or conduit, listing the pole or conduit locations of each, and (3) update annually on or before April 1st the information provided to the Town Clerk, including the location of additional attachers, and any attachers that have removed or added new attachments.

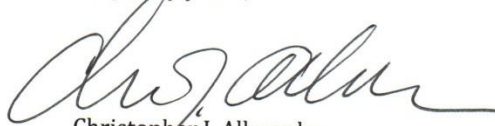
These conditions are not revisions required under RSA 72:23, or the New Hampshire Supreme Court cases interpreting that statute, in order to legally assess and tax either the facilities or equipment of the named licensee, or the use and occupancy of the public right of way by the named licensee. Furthermore, such other attachers, to the extent they may exist, are required to license or permit their facilities located within the public rights of way with the Town of Francestown pursuant to RSA 231:159, et seq., just as Eversource is. Consequently, the identity of attachers utilizing the public rights of way, whether by attachment to existing utility poles, conduit or otherwise, should be obtainable from Francestown's own public highway licensing records. Eversource is not aware of any statute or other provision of law in New Hampshire which authorizes the Town of Francestown to compel Eversource to provide this information as a condition of a pole or conduit license.

We also bring to your attention that, in accordance with the requirements of RSA 374:34-a, public utilities such as Eversource must provide non-discriminatory access to their distribution poles and conduit to certain third parties seeking to use them for attachment of their own lines, cables and appurtenances. Under existing regulations of the New Hampshire Public Utilities Commission (Puc 1303.08), such third parties are required to clearly label their attachments with owner identification. This affords another means by which the Town may obtain its own information pertaining to attachers utilizing the public rights of way.

Under the above circumstances, Eversource maintains it is neither legally necessary, nor fair or reasonable, to require a licensee to provide or report to the Town information about others using the licensee's poles or conduits licensed in the public right of way. Such a license amendment is not required in the public good.

As Eversource is unable to send a representative to your hearing, Eversource respectfully requests that this letter be included in and made a part of the record of the minutes of the hearing of this matter on March 21, 2016. Thank you.

Very truly yours,



Christopher J. Allwarden
Senior Counsel, Legal Department

cc: Jeana Delisle, Eversource